

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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AKASHA SHAYTAN. F.,

Plaintiff,

Civil Action No.  
5:19-CV-0977 (DEP)

v.

ANDREW M. SAUL, Commissioner Social  
Security Administration,

Defendant.

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APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF

LEGAL AID SOCIETY OF  
MID-NEW YORK, INC.  
221 South Warren St.  
Syracuse, NY 13202

ELIZABETH V. KRUPAR, ESQ.

FOR DEFENDANT

HON. ANTOINETTE T. BACON  
Acting United States Attorney  
P.O. Box 7198  
100 S. Clinton Street  
Syracuse, NY 13261-7198

PAUL NITZE, ESQ.  
Special Assistant U.S. Attorney

DAVID E. PEEBLES  
U.S. MAGISTRATE JUDGE

ORDER

Currently pending before the court in this action, in which plaintiff seeks judicial review of an adverse administrative determination by the Commissioner of Social Security, pursuant to 42 U.S.C. §§ 405(g) and

1383(c)(3), are cross-motions for judgment on the pleadings.<sup>1</sup> Oral argument was heard in connection with those motions on September 1, 2020, during a telephone conference conducted on the record. At the close of argument I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination resulted from the application of proper legal principles and is supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by the plaintiff in this appeal.

After due deliberation, and based upon the court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is hereby

ORDERED, as follows:

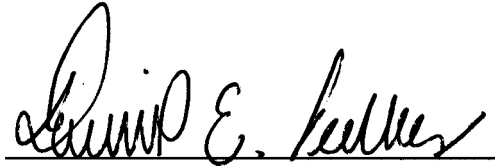
- 1) Defendant's motion for judgment on the pleadings is GRANTED.
- 2) The Commissioner's determination that the plaintiff's disability ended on September 14, 2017, and the plaintiff has not become disabled

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<sup>1</sup> This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order once issue has been joined, an action such as this is considered procedurally, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

again since that date, is AFFIRMED.

3) The clerk is respectfully directed to enter judgment, based upon this determination, DISMISSING plaintiff's complaint in its entirety.

A handwritten signature in black ink, appearing to read "David E. Peebles", written over a horizontal line.

David E. Peebles  
U.S. Magistrate Judge

Dated: September 8, 2020  
Syracuse, NY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----x  
AKASHA F.,

Plaintiff,

-v-

19-CV-977

COMMISSIONER OF SOCIAL SECURITY,

Defendant.  
-----x

**TRANSCRIPT OF PROCEEDINGS**  
**BEFORE THE HONORABLE DAVID E. PEEBLES**  
September 1, 2020  
100 South Clinton Street, Syracuse, New York

For the Plaintiff:  
(Appearance by telephone)

LEGAL AID SOCIETY OF MID-NEW YORK, INC.  
221 South Warren Street  
Suite 310  
Syracuse, New York 13202  
BY: **ELIZABETH V. KRUPAR, ESQ.**

For the Defendant:  
(Appearance by telephone)

SOCIAL SECURITY ADMINISTRATION  
J.F.K. Federal Building, Room 625  
15 New Sudbury Street  
Boston, Massachusetts 02203  
BY: **PAUL NITZE, ESQ.**

*Hannah F. Cavanaugh, RPR, CRR, CSR, NYACR, NYRCR*  
*Official United States Court Reporter*  
*100 South Clinton Street*  
*Syracuse, New York 13261-7367*  
*(315) 234-8545*

1 (The Court and all parties present by telephone.

2 Time noted: 1:33 p.m.)

3 THE COURT: Let me begin by thanking both counsel for  
4 excellent detailed and forceful presentations dealing with this  
5 interesting case.

6 Plaintiff commenced this proceeding pursuant to 42,  
7 United States Code, Sections 405(g) and 1383(c)(3) to challenge  
8 a determination by the Commissioner of Social Security. This is  
9 a somewhat different case than the ordinary in that the  
10 plaintiff was previously at one time granted benefits under the  
11 Social Security Act. The focus of the Administrative Law  
12 Judge's decision in this case and the Commissioner's ultimate  
13 determination was whether medical improvement had occurred and  
14 whether, notwithstanding that medical improvement, plaintiff  
15 continued to be disabled and unable to perform work functions in  
16 positions in the national economy.

17 The background is as follows: Plaintiff is in the  
18 process, beginning in August of 2017, of a transgender  
19 transformation, female to male. The plaintiff prefers to be  
20 called Jakob, with a K, although he has not legally changed his  
21 name. As the Administrative Law Judge, I will refer to the  
22 plaintiff using male pronouns.

23 Plaintiff was born in February of 1993 and is  
24 currently 27 years old. He stands 5'3" or 5'2" inches,  
25 depending on where in the record you refer, in height and is

1 obese, weighing somewhere at various times between 196 and  
2 225 pounds. Plaintiff lives in an apartment in Syracuse with  
3 his partner, David W. It is a one bedroom fourth floor  
4 apartment. They have a cat. Plaintiff has previously lived in  
5 Arizona and with his mother in Niagara Falls. Plaintiff has a  
6 high school degree and one year of college education. Plaintiff  
7 has a massage therapy certification.

8           Plaintiff was never married and has no children. He  
9 is right-handed. He has no driver's license. He does use  
10 public transportation, including buses and Ubers. Plaintiff has  
11 never worked except as a seasonal employee in Arizona at age 16.  
12 He also stated that he has done some volunteer work at a  
13 library.

14           Physically, plaintiff has been treated for  
15 Legg-Calve-Perthes disease, which, as I understand it, is a  
16 childhood disease that affects the hip and occurs when the blood  
17 supply to the rounded head of the femur is temporarily disrupted  
18 causing bone cells to die, a process known as avascular  
19 necrosis. The plaintiff underwent, to address that condition, a  
20 hip replacement in January of 2014 at the Shriners Hospital. He  
21 also suffers from polycystic ovary syndrome or PCOS. He  
22 presented to the emergency rooms at two hospitals with vaginal  
23 bleeding, once in Oneida in May of 2016, and once at Upstate in  
24 February of 2018. He also suffers from endometriosis.

25           Mentally, plaintiff has been variously diagnosed as

1 having posttraumatic stress disorder or PTSD, depression and  
2 depressive disorder, gender dysphoria, anxiety disorder, and  
3 dissociative identity disorder. Plaintiff's partner, David,  
4 testified that plaintiff has as many as ten separate identities.  
5 Plaintiff undergoes hallucinations.

6 Plaintiff initially saw Dr. Emeka Anumba who  
7 apparently has abandoned the practice of medicine. His primary  
8 provider is Nurse Practitioner Kathleen McDonald at  
9 St. Joseph's. He also sees Dr. Rachel Hopkins for diabetes and  
10 transgender evaluation and treatment. He receives treatment at  
11 Syracuse Behavioral Health, which is also known as or has  
12 transitioned to Helio Health, including from LMSW Anita Fellows  
13 who he sees weekly. There's indication that his care is  
14 overseen by Dr. Damon Tohtz, although there did not appear to be  
15 any records showing that Dr. Tohtz has actually examined or  
16 evaluated the plaintiff.

17 Plaintiff is on variations medications, including  
18 Klonopin, Risperdal, Metformin, Lisinopril, testosterone since  
19 September of 2017, insulin, and Ibuprofen. Plaintiff testified  
20 he's never smoked, although at page 565 there's indication he's  
21 told Dr. Ganesh that he was a former smoker.

22 Plaintiff has a fairly wide range of activities of  
23 daily living. He is able to groom, cook and prepare meals, wash  
24 dishes, clean, mop, sweep, vacuum. There's a question as to  
25 whether he's able to do laundry, and the record is equivocal on

1 that issue. He uses public transportation as I previously  
2 indicated, shops, goes out alone, socializes, reads, writes, he  
3 does beaded jewelry, watches television, engages in social  
4 media, swims, goes out to dinner occasionally and to the movies,  
5 and watches David, his partner, play video games.

6           Procedurally, plaintiff was found to be disabled on  
7 January 24, 2013, and eligible for Supplemental Security Income  
8 Title XVI benefits with an onset date of November 7, 2012. On  
9 September 14, 2017, there was a determination of medical  
10 improvement affecting plaintiff's ability to work and a finding  
11 of no disability was entered effective on September 14, 2017. A  
12 hearing was conducted by Administrative Law Judge Robyn L.  
13 Hoffman on August 15, 2018, to address the issue of medical  
14 improvement. At that hearing, plaintiff proceeded without legal  
15 or other representation. On October 18, 2018, Administrative  
16 Law Judge Hoffman issued an unfavorable decision. On July 23,  
17 2019, the Social Security Administration Appeals Council denied  
18 plaintiff's request for review. In doing that, the Appeals  
19 Council reviewed additional documents produced from Therapist  
20 Fellows and Dr. Tohtz, as well as Nurse Practitioner McDonald,  
21 and found that the consideration of those documents would not  
22 have likely altered the result. This action was commenced on  
23 August 7, 2019, and is timely.

24           In her decision, ALJ Hoffman applied the test for  
25 medical improvement. At step one, the Administrative Law Judge



1 concluded that at the reference point/time of January 24, 2013,  
2 known as the comparison point decision, or CPD, plaintiff  
3 suffered from severe impairments imposing more than minimal  
4 limitations on his ability to perform basic work functions,  
5 including Legg-Calve-Perthes disease of the left hip and  
6 obesity.

7           The Administrative Law Judge then concluded that  
8 since September 14, 2017, plaintiff suffers from severe  
9 impairments, including Legg-Calve-Perthes disease of the left  
10 hip, status post total hip replacement, obesity, hypertension,  
11 polycystic ovary syndrome or PCOS, posttraumatic stress disorder  
12 or PTSD, anxiety disorder, depressive disorder, gender  
13 dysphoria, and dissociative disorder.

14           The ALJ next concluded at step three of the  
15 sequential analysis that since September 14, 2017, plaintiff's  
16 conditions do not meet or medically equal any of the listed  
17 presumptively disabling conditions set forth in the  
18 Commissioner's regulations, specifically considering listing  
19 1.02 related to major joint dysfunctions, 1.03 related to  
20 reconstructive surgery of major weightbearing joints, 7.18  
21 repeated complaints of hematological disorders, 12.04  
22 depression, bipolar disorder, and so forth, 12.06 related to  
23 anxiety and obsessive compulsive disorder, and 12.15 related to  
24 trauma and stressor-related disorders. ALJ Hoffman also  
25 considered plaintiff's obesity.

1           After making that review, ALJ Hoffman concluded that  
2     since September 14, 2017, plaintiff retains the ability to  
3     perform light work, specifically being able to lift and carry  
4     20 pounds occasionally and 10 pounds frequently. He can sit for  
5     up to six hours and stand or walk for approximately six hours in  
6     an eight-hour day with normal breaks. Mentally, the plaintiff  
7     is able to understand, carry out, and remember simple  
8     instructions, respond appropriately to supervision, coworkers,  
9     and usual work situations, and can deal with changes in a  
10    routine work setting.

11           At step four, Administrative Law Judge Hoffman noted  
12    that plaintiff did not have any past relevant work.

13           She then proceeded to step five. She noted that if  
14    plaintiff were able to perform a full range of light work, a  
15    finding of no disability would be directed by the  
16    Medical-Vocational Guidelines set forth in the Commissioner's  
17    regulations, and specifically Rule 202.20. Relying on Social  
18    Security Ruling 85-15, ALJ Hoffman concluded that plaintiff's  
19    additional limitations, nonexertional limitations that is, do  
20    not preclude him from performing basic mental requirements of  
21    unskilled work and, therefore, concluded that plaintiff  
22    experienced medical improvement and was not disabled subsequent  
23    to September 14, 2017.

24           As you know, the Court must review the determination  
25    and analyze whether it is supported by substantial evidence and

1 whether the Administrative Law Judge applied the correct legal  
2 principles. The standard to be applied is extremely  
3 deferential. The Second Circuit noted in *Brault v. Social*  
4 *Security Administration Commissioner*, 683 F.3d 443 from 2012,  
5 that this is a very stringent test akin to or even, perhaps,  
6 greater than the clearly erroneous test which we as lawyers are  
7 familiar with. Of course, substantial evidence means such  
8 relevant evidence as a reasonable mind might accept as adequate  
9 to support a conclusion. The Second Circuit noted in *Brault*  
10 that the standard means once an Administrative Law Judge has  
11 found a fact, that fact can be rejected only if a reasonable  
12 factfinder would have to conclude otherwise.

13           Plaintiff raises four basic contentions in this case.  
14 He contends that the plaintiff -- the ALJ, I'm sorry, failed to  
15 fulfill his duty to develop a full and fair record and  
16 specifically to obtain records from Planned Parenthood and  
17 Upstate Women's Health Services. The second argument is that  
18 the RFC was flawed because it did not include nonexertional  
19 limitations and specifically a mild limitation in interacting  
20 with others and a moderate limitation in adapting and managing  
21 self. The third argument is that the plaintiff's subjective  
22 claims of symptoms were not properly analyzed. And fourth, the  
23 step five determination was flawed because it is based on an  
24 erroneous residual functional capacity finding and should have  
25 been the subject of vocational expert testimony rather than

1 reliance on the grids.

2 I note that the termination of medical benefits is  
3 governed by both 42, United States Code, Section 421 and 20  
4 C.F.R. 6416.994. The Commissioner is statutorily charged with  
5 the duty to engage in a continuing periodic review of a  
6 claimant's condition. If, based on that review, the  
7 Commissioner determines that the disabling condition has  
8 subsided, does not exist, or is not disabling, a termination of  
9 benefits may be ordered.

10 In making a review to determine whether the cessation  
11 of Social Security benefits is warranted, the Commissioner must  
12 examine the claimant's current condition, ordinarily requiring  
13 assessment of the plaintiff's condition at the time of the  
14 hearing. Generally speaking, termination of benefits is  
15 appropriate when there has been medical improvement related to  
16 the claimant's ability to work, the claimant has benefitted from  
17 advances in medical or vocational technology related to the  
18 ability to work regardless of the lack of medical improvement, a  
19 claimant has undergone vocational therapy related to the ability  
20 to work based on new or improved diagnostic or evaluative  
21 techniques, it is demonstrated that a claimant's condition was  
22 not as disabling as previously regarded, or substantial evidence  
23 shows that an earlier finding of disability was erroneous.

24 When a claimant's medical condition improves to the  
25 extent that he or she can engage in substantial gainful

1 activity, that party will no longer be entitled to benefits  
2 under the act. In order to support the termination of benefits,  
3 the Commissioner must meet a burden of showing by substantial  
4 evidence that a medical improvement has taken place in a  
5 claimant's ability to perform work activity.

6 If there is medical improvement, the Commissioner  
7 must determine whether the improvement is related to the  
8 claimant's ability to work. A medical improvement will be  
9 related to the claimant's ability to work where it results in a  
10 decrease in the severity of the impairment present at the time  
11 of the most recent favorable medical decision and an increase in  
12 the claimant's functional capacity to perform basic work  
13 activities.

14 The medical improvement test entails a -- it depends  
15 on whether you -- where you look. It's either a seven or eight  
16 step test. *Michael M. v. Commissioner of Social Security*, a  
17 case from this district, Magistrate Judge Baxter, it is reported  
18 at 2019 WL 530801, characterizes it as a seven -- as an eight  
19 step test for determining disability. *Chavis* also deals with  
20 termination of benefits, *Chavis v. Astrue*, 2010 WL 624039, a  
21 decision from District Judge Kahn. He also characterizes it as  
22 an eight step test for determining medical improvement. I think  
23 Judge Hoffman may have referred to it as a seven step test, but  
24 regardless, it's clear to me that she applied the appropriate  
25 test.

1           Turning to the specifics of plaintiff's arguments,  
2           there's no question that the plaintiff underwent medical  
3           improvement of the condition that resulted in the initial  
4           finding of disability when he underwent a hip replacement.  
5           Turning again to the development of the record issue, there is  
6           no question that the -- can I ask you to mute your phones if you  
7           have not done so already?

8           MR. NITZE: Yes, your Honor.

9           THE COURT: So undeniably -- unquestionably, an  
10          Administrative Law Judge has a duty to develop a full and fair  
11          record. Disability hearings are not adversarial proceedings in  
12          the truest sense. That duty is particularly acute when a  
13          plaintiff is acting pro se unrepresented such as occurred in  
14          this case. *Bodine v. Colvin*, 2013 WL 1108625 from the Northern  
15          District of New York, 2013, that was adopted at 2013 WL 1104127  
16          on March 18, 2013, that is also supported by *Morris v.*  
17          *Berryhill*, 721 F. App'x 25 from the Second Circuit Court of  
18          Appeals, January of 2018.

19          As a side note, I reviewed the colloquy that occurred  
20          at the outset of the hearing concerning the right of plaintiff  
21          to have counsel or some other non-attorney representative appear  
22          on his behalf at the hearing. The colloquy occurs at 163 to 166  
23          of the Administrative Transcript. I find that the colloquy was  
24          adequate in carrying out the Administrative Law Judge's duty in  
25          that regard, *Genito v. Commissioner of Social Security*, 2017 WL

1 1318002, that is from the Northern District of New York, 2017.

2           The plaintiff's claim is that records should have  
3 been obtained concerning his endometriosis and PCOS and they  
4 would have resulted in additional limitations. In his argument,  
5 however, he does not identify what those limitations would be.  
6 The duty under *Bodine* and the other case that I've cited to  
7 develop the record only appears if there are gaps and the  
8 question of disability cannot be decided on the existing  
9 evidence. In this case, I find no obvious gaps and, therefore,  
10 there was no duty to further develop the record.

11           Here, the Administrative Law Judge had before her  
12 notes of treatment of both -- from physical and mental  
13 providers, as well as consultative opinions from Dr. Dennis M.  
14 Noia, a psychologist who examined the plaintiff, and Dr. Kalyani  
15 Ganesh, who conducted an orthopedic examination. There was also  
16 information from Dr. Mary McLarnon. The Administrative Law  
17 Judge specifically asked the plaintiff if there was any  
18 additional evidence that should be secured at 165 and 166, and  
19 asked at page 167 if there was anything missing, to which the  
20 plaintiff responded no. The plaintiff was represented by  
21 counsel before the Appeals Council, but did not submit  
22 additional records from those two providers that I just  
23 identified or ask for time to secure those additional records,  
24 so I find no error. I also find that if there was an error in  
25 this regard, it is harmless because the treatment notes in the

1 record show that plaintiff's PCOS was stable and don't appear to  
2 indicate any additional limitations on his ability to perform  
3 work functions.

4           Turning to the nonexertional limitations and the  
5 claim that additional limitations should have been included in  
6 the RFC, I note that Dr. Dennis Noia examined the plaintiff on  
7 June 30, 2017. His report appears at page 560 through 564 of  
8 the Administrative Transcript. On examination, Dr. Noia found  
9 that plaintiff's demeanor and responsiveness to questions to be  
10 cooperative; his manner of relating social skills and overall  
11 presentation was adequate; stated that he looked his stated age;  
12 his speech intelligibility was fluent; his thought processes  
13 were coherent and goal directed with no evidence of delusions,  
14 hallucinations, or disordered thinking; his affect was full  
15 range and congruent with his thoughts and speech; his mood was  
16 reported to be feeling anxious, somewhat tense, and  
17 apprehensive; his sensorium was clear; he was oriented times  
18 three; his attention and concentration was intact; his recent  
19 and remote memory skills were intact; his cognitive functioning  
20 was estimated to be in the average range; insight was listed as  
21 good; judgment was listed as good.

22           In his medical source statement, Dr. Noia stated the  
23 claimant appears to have no limitations understanding,  
24 remembering, or applying simple directions and instructions. He  
25 appears to have no limitations understanding, remembering, or



1 applying complex directions and instructions. He appears to  
2 have no limitations using reasoning and judgment to make  
3 work-related decisions. He appears to have mild limitations  
4 interacting adequately with supervisors, coworkers, and the  
5 public. He appears to have no limitations sustaining  
6 concentration and performing a task at a consistent pace. He  
7 appears to have no limitations sustaining an ordinary routine  
8 and regular attendance at work. He appears to have moderate  
9 limitations regulating emotions, controlling behavior, and  
10 maintaining wellbeing. He appears to have no limitations  
11 maintaining personal hygiene and wearing appropriate attire. He  
12 appears to have no limitations being aware of normal hazards and  
13 taking appropriate precautions.

14 Dr. Noia's report was discussed by the Administrative  
15 Law Judge at page 32. At page 36, it was given great weight. I  
16 note that a plaintiff -- an ALJ does not have an obligation to  
17 adopt all parts of any one particular opinion. In this case,  
18 Dr. Noia's findings are well supported. At page 33,  
19 Administrative Law Judge Hoffman did, when addressing the  
20 so-called (b) criteria, did acknowledge mild difficulties in  
21 interacting with others and moderate difficulties in adapting or  
22 managing self. Of course, the (b) criterion do not equate to a  
23 residual functional capacity finding, but more importantly, mild  
24 limitation in social functioning does not preclude interaction  
25 with supervisors/coworkers in a normal work setting or the

1 ability to perform basic demands of unskilled work, *Cuenca v.*  
2 *Commissioner*, 2016 WL 2865726 from the Northern District of New  
3 York, 2016. So I find that Dr. Noia's opinions do support the  
4 residual functional capacity and do not preclude the ability to  
5 perform basic work functions, simple unskilled work, or to  
6 interact with supervisors, coworkers, and the public.

7           The other argument raised in this regard by the  
8 plaintiff hinges on Therapist Fellows's August 1, 2018, two-page  
9 letter at page 678 and 679. That letter generally describes her  
10 treatment of the plaintiff. It does not contain any  
11 function-by-function opinions. The only opinion contained in it  
12 is, quote, it is my professional opinion that Jakob is unable to  
13 work at this time. That is an opinion that even plaintiff  
14 conceded is not binding on the Administrative Law Judge and  
15 could address this matter entrusted to the discretion of the  
16 Commissioner.

17           In terms of the plaintiff's argument drawn from this  
18 letter, it was based on inference, his interpretation of what  
19 LMSW Fellows said concerning the treatment, so -- and of course,  
20 as it was noted under the regulations that apply to this case,  
21 Therapist Fellows is not an acceptable medical source. Although  
22 the letter appears to be co-signed by Dr. Tohtz, there isn't any  
23 evidence in the record that he was truly a treating physician  
24 vis-à-vis plaintiff. So in conclusion, I find no error in  
25 addressing and including in the RFC any meaningful opinions from

1 Dr. Noia and Therapist Fellows.

2           Turning to the credibility analysis, undeniably an  
3 ALJ must take into account a plaintiff's subjective complaints  
4 in rendering the five step disability analysis. When examining  
5 the issue, however, the ALJ is not required to blindly accept  
6 the subjective testimony of a claimant, rather an ALJ retains  
7 the discretion to weigh the credibility of the claimant's  
8 testimony in light of the other evidence in the records. The  
9 analysis of subjective claims of symptomology is essentially a  
10 two-step process. In the first instance, the Administrative Law  
11 Judge must determine whether the claimed symptoms are consistent  
12 with and supported by objective clinical evidence demonstrating  
13 that he has a medical impairment that could reasonably be  
14 expected to produce the pain or other symptoms alleged. If so,  
15 the ALJ then must consider various factors in determining  
16 credibility. Those factors are outlined in both 20 C.F.R.  
17 Section 416.929 and in Social Security Ruling 16-3p.

18           In this case, Administrative Law Judge Hoffman went  
19 through a credibility analysis, discussed plaintiff's claims,  
20 and properly engaged in the analysis. I note that although SSR  
21 16-3p references several factors, as does the regulation that I  
22 cited, it's not necessary to meet all of the factors or to  
23 discuss all of the factors. In this case, the -- and of course,  
24 the Administrative Law Judge's entire decision should be looked  
25 to to determine whether the determination of plaintiff's

1 credibility or subjective claims was properly conducted by the  
2 Administrative Law Judge.

3 In this case, ALJ Hoffman recited plaintiff's claims  
4 at page 35 and rejected them based primarily on plaintiff's  
5 function report, including activities of daily living, the  
6 opinions of Dr. Noia and Dr. Ganesh, and the relative benign  
7 findings specifically of Dr. Noia. The activities of daily  
8 living were outlined at page 36. Activities of daily living are  
9 very much an appropriate consideration. This case is not unlike  
10 *Carvey v. Astrue*, 380 F. App'x 50 from the Second Circuit, 2010,  
11 where the Second Circuit rejected -- supported the ALJ's  
12 rejection of the plaintiff's testimony based on not only  
13 extensive objective medical tests, but also the wide ranging  
14 activities of the plaintiff, including shopping, cooking, child  
15 care, operating a riding lawnmower, attending school functions,  
16 cookouts, and auto races.

17 In this case, especially dealing with the physical,  
18 plaintiff literally underwent little or no treatment for his  
19 physical condition. Again, this is a proper consideration under  
20 *Diaz-Sanchez v. Berryhill*, 295 F.Supp.3d 302 in the Western  
21 District of New York in 2018. I find that the Administrative  
22 Law Judge properly applied SSR 16-3p in considering the  
23 plaintiff's subjective reports of symptomology and the resulting  
24 finding of the Administrative Law Judge is supported by  
25 substantial evidence.

1           At step five, I note that it is the Commissioner's  
2     burden at that step to carry. In this case, the Administrative  
3     Law Judge properly relied on SSR 85-15 to address the mental  
4     demands of basic unskilled work at page 37 and 38. The  
5     vocational expert's testimony is only required if nonexertional  
6     limitations limit the range of work permitted by exertional  
7     limitations, *Bombard-Senecal v. Commissioner*, 2014 WL 3778568  
8     from the Northern District of New York, 2014, also *Sibala v.*  
9     *Astrue* from the Second Circuit, 595 F.3d 402, 2010, and  
10    *Pritchard v. Colvin*, 2014 WL 3534987 from the Northern District  
11    of New York, 2014.

12           I note that the Second Circuit has held the mere  
13    existence of nonexertional limitations does not automatically  
14    require the testimony of a vocational expert, *Bapp v. Bowen*, 802  
15    F.3d 601 from the Second Circuit, 1986. And so the finding of  
16    nonexertional limitations in this case did not limit the range  
17    of work permitted by plaintiff's exertional limitations under  
18    *Sibala*, which I cited a moment ago.

19           The plaintiff relies on Magistrate Judge Andrew  
20    Peck's decision in *Prince v. Colvin*, 2015 WL 1408411. It's a  
21    decision I'm not sure I, with all due respect to my former  
22    colleague, agree with. I think while SSR 85-15 on its face may  
23    only apply in cases involving purely nonexertional limitations,  
24    it does provide guidance on the mental demands of simple  
25    unskilled work and was properly looked to in that respect by

1 Administrative Law Judge Hoffman.

2 In conclusion, I find that the determination of the  
3 Commissioner was supported by substantial evidence and resulted  
4 from the application of correct and proper legal principles and  
5 I will therefore grant judgment on the pleadings to the  
6 defendant.

7 I'd like to thank both counsel and I hope you stay  
8 safe during these trying times.

9 MS. KRUPAR: Thank you, your Honor.

10 MR. NITZE: Thank you, your Honor.

11 (Time noted: 2:09 p.m.)  
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1  
2 CERTIFICATE OF OFFICIAL REPORTER  
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4  
5 I, HANNAH F. CAVANAUGH, RPR, CRR, CSR, NYACR,  
6 NYRCR, Official U.S. Court Reporter, in and for the United  
7 States District Court for the Northern District of New York, DO  
8 HEREBY CERTIFY that pursuant to Section 753, Title 28, United  
9 States Code, that the foregoing is a true and correct transcript  
10 of the stenographically reported proceedings held in the  
11 above-entitled matter and that the transcript page format is in  
12 conformance with the regulations of the Judicial Conference of  
13 the United States.  
14

15 Dated this 4th day of September, 2020.  
16

17 x Hannah F. Cavanaugh

18 HANNAH F. CAVANAUGH, RPR, CRR, CSR, NYACR, NYRCR  
19 Official U.S. Court Reporter  
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